

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

AYYAKKANNU MANIVANNAN,

Plaintiff,

v. // CIVIL ACTION NO. 1:17CV216  
(Judge Keeley)

UNITED STATES OF AMERICA,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 20],  
GRANTING DEFENDANT'S MOTION TO DISMISS [DKT. NO. 6],  
AND DISMISSING COMPLAINT WITHOUT PREJUDICE [DKT. NO. 1]

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On April 5, 2017, the pro se plaintiff, Ayyakkannu Manivannan ("Manivannan"), filed a complaint in the Magistrate Court of Monongalia County, West Virginia, naming Grace M. Bochenek, Ph.D., Director of the National Energy Technology Laboratory ("Dr. Bochenek"), as the sole defendant and stating only, "Help me retrieve my personal belongings in my former office" (Dkt. No. 1-1). On December 14, 2017, despite the fact that Dr. Bochenek had not yet been properly served, the United States removed the action to this Court (Dkt. No. 1), and pursuant to 28 U.S.C. §§ 1441(a)(1) and 2679(d)(2), also moved to substitute the United States as the defendant (Dkt. No. 2).

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred any motion in this case to the Honorable Michael J. Alois, United States Magistrate Judge, for written orders or reports and recommendations (Dkt. No. 4). On December 27, 2017, the United

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States moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(1) (Dkt. No. 6).

In a Report and Recommendation ("R&R") entered on February 21, 2018, Magistrate Judge Aloï recommended that the Court dismiss the complaint without prejudice for lack of subject-matter jurisdiction (Dkt. No. 20).<sup>1</sup> More particularly, the R&R concluded that Manivannan had failed to exhaust his administrative remedies as required by § 2675(a) of the Federal Tort Claims Act. Id. at 5-6. The R&R further concluded that, to the extent the complaint could be read as a request for injunctive relief under § 702 of the Administrative Procedure Act, Manivannan had failed to identify any final agency action to be reviewed. Id. at 6-8.

The R&R also informed the parties of their right to file "written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." Id. at 8. It further warned that the failure to do so may result in waiver of the right to appeal. Id. Although Manivannan received a copy of the R&R by certified mail on February 23, 2018 (Dkt. No. 21), neither party has filed any objections to the R&R.

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<sup>1</sup> On the same day, Magistrate Judge Aloï granted the United States motion to substitute (Dkt. No. 20 at 3).

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When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). On the other hand, "the Court may adopt, without explanation, any of the magistrate judge's recommendations to which the prisoner does not object." Dellacirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold those portions of a recommendation to which no objection has been made unless they are "clearly erroneous." See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because neither party has objected, the Court is under no obligation to conduct a de novo review. Dellacirprete, 479 F. Supp. 2d at 603-04. Upon review of the R&R and the record for clear error, the Court:

- 1) **ADOPTS** the R&R (Dkt. No. 20);
  - 2) **GRANTS** the defendant's motion to dismiss (Dkt. No. 6);
- and
- 3) **DISMISSES** the complaint **WITHOUT PREJUDICE** (Dkt. No. 1).

It is so **ORDERED**.

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The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record and the pro se plaintiff, certified mail and return receipt requested, to enter a separate judgment order, and to remove this case from the Court's active docket.

DATED: May 21, 2018.

/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE